

REMARKS

Claims 1-5 and 7-14 are pending.

Claims 1-5 and 7-14 stand rejected.

Claims 1, 9 and 12 have been amended. Support for these amendments can be found throughout the specification and drawings, as originally filed.

The specification has been amended to include a cross-reference to a related application.

This response is submitted in response to a Final Office Action and is deemed to place the application in a condition for allowance, or alternatively, in better condition for appeal.

STATEMENT OF THE SUBSTANCE OF THE INTERVIEW

The Applicant provides the following statement of the substance of the interview. On January 18, 2008 a telephonic interview initiated by the Applicant was conducted, wherein independent claims 1, 9 and 12, and those claims depending therefrom, were discussed in light of the rejections of the outstanding Final Office Action based on the Murray and Bryan references.

The Applicant agreed to consider amending independent claims 1, 9 and 12 to more clearly define the invention by, for example, inserting language directed to an indexing feature of the invention, i.e., wherein the peg members of the receiving jaw are shaped or sized to fit through the holes of the bone plate, wherein the pressure exerting

element of the pressure exerting jaw is sized or shaped so as to not be able to fit through the holes of the bone plate, in order to address the 35 U.S.C. 103(a) rejection. Agreement on the claims was not reached.

PRIORITY

The Applicant submits herewith a certified copy of the foreign priority document, German patent application serial no. 10301692.9, as required by 35 U.S.C. 119(b).

SPECIFICATION

The Applicant has amended the specification to include a priority claim to German patent application serial no. 10301692.9.

OATH/DECLARATION

The Applicant submits herewith a new combined declaration and power of attorney, in accordance with the Examiner's suggestion.

35 USC §103(a) REJECTION

Claims 1-8 and 12-14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,960,147 to Murray in view of U.S. Patent No. 1,268,922 to Bryan.

The Applicants respectfully traverse the 35 U.S.C. §103(a) rejection of claims 1-8 and 12-14. Note: dependent claim 6 has been previously canceled, without prejudice, and

the subject matter thereof substantially incorporated into independent claim 1. Accordingly, the Applicant will respond to the instant rejection as referring to claims 1-5, 7, 8 and 12-14.

The standard for obviousness is that there must be some suggestion, either in the reference or in the relevant art, of how to modify what is disclosed to arrive at the claimed invention. In addition, "[s]omething in the prior art as a whole must suggest the desirability and, thus, the obviousness, of making" the modification to the art suggested by the Examiner. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1051, 5 U.S.P.Q.2d (BNA) 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988). Although the Examiner may suggest the teachings of a primary reference could be modified to arrive at the claimed subject matter, the modification is not obvious unless the prior art also suggests the desirability of such modification. *In re Laskowski*, 871 F.2d 115, 117, 10 U.S.P.Q.2d (BNA) 1397, 1398 (Fed. Cir.1989). There must be a teaching in the prior art for the proposed combination or modification to be proper. *In re Newell*, 891 F.2d 899, 13 U.S.P.Q.2d (BNA) 1248 (Fed. Cir. 1989). If the prior art fails to provide this necessary teaching, suggestion, or incentive supporting the Examiner's suggested modification, the rejection based upon this suggested modification is error and must be reversed. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d (BNA) 1566 (Fed. Cir. 1990).

The law is also clear that a claim in dependent form shall be construed to incorporate all the limitations of the claim to which it refers. 35 U.S.C. 112, fourth paragraph.

In the interests of expediting prosecution of the instant application, and without admission that any amendment is required, the Applicants have amended claim 1 to

recite, among other things, bending pliers for perforated bone plates, comprising: two jaws movable relative to one another, including *a receiving jaw having two spaced-apart peg members* at a fixed distance to one another with an axial extent and *having a first circumference operable for insertion through holes of a substantially planar bone plate to be received*, the peg members having an outside diameter which is variable along their axial extent in order to cooperate with different hole types; and a pressure-exerting jaw comprising a pressure-exerting element which, when the bending pliers are actuated, cooperates with a received bone plate in a region between the two peg members, *wherein the pressure-exerting element* is of a substantially peg-shaped design and *has a second circumference inoperable to engage the holes of the bone plate*; wherein the two peg members of the receiving jaw are fixed along a single axis; wherein the pressure exerting jaw is selectively operable to move transverse to the single axis.

In the interests of expediting prosecution of the instant application, and without admission that any amendment is required, the Applicants have amended claim 12 to recite, among other things, bending-pliers with jaws that are moveable relative to one another, comprising: a first jaw having two spaced-apart peg members at a fixed distance to one another, *the peg members of the first jaw having a first circumference operable for insertion through holes of a substantially planar bone plate to be received*, the peg members each having a free end and an outside diameter that increases starting from the free end; and a second jaw supporting a counter-bearing element that cooperates upon actuation of the bending pliers with a received bone plate in a region between the two peg members of the first jaw, *wherein the counter-bearing element* is of a substantially peg-shaped design and *has a second circumference inoperable to engage the holes of the*

bone plate; wherein the first and second jaws are moveable relative to one another; wherein the two peg members of the receiving jaw are fixed along a single axis; wherein the pressure exerting jaw is selectively operable to move transverse to the single axis.

Neither Murray nor Bryan, either alone or in combination therewith, disclose or suggest the invention as claimed in independent claims 1 or 12, or the claims dependent therefrom.

Specifically, Murray and/or Bryan, either alone or in combination therewith, fail to disclose or suggest bending pliers comprising a first jaw having two spaced-apart peg members, the peg members of the first jaw having a first circumference operable for insertion through holes of a substantially planar bone plate to be received, and a second jaw supporting a counter-bearing element that cooperates upon actuation of the bending pliers with a received bone plate in a region between the two peg members of the first jaw, wherein the counter-bearing element is of a substantially peg-shaped design and has a second circumference inoperable to engage the holes of the bone plate.

With respect to Murray, the supposed “peg members” seem to be identical in shape and size, and therefore are presumably intended to engage identical structures. With respect to Bryan, Figures 1-3 make clear that the supposed “peg members” are perfectly identical to one another. Therefore, neither Murray or Bryan appreciate the feature of the present invention wherein the peg members of the respective jaw members are sized and shaped differently so as to ensure that the user can only engage the bone plate with the peg members of the receiving jaw, as opposed to the peg member of the pressure-exerting jaw. In this manner, the bone plate will be properly manipulated without causing damage thereto. Thus, one of ordinary skill in the art would not look to

Murray and/or Bryan, either alone or in combination therewith, for guidance on bending pliers, as presently claimed.

Because claim 1 is allowable over Murray and/or Bryan, either alone or in combination therewith, for at least the reasons stated above, claims 2-5, 7 and 8, which depend from and further define claim 1, are likewise allowable. Additionally, because claim 12 is allowable over Murray and/or Bryan, either alone or in combination therewith, for at least the reasons stated above, claims 13 and 14, which depend from and further define claim 12, are likewise allowable.

Accordingly, the Applicants contend that the 35 U.S.C. 103(a) rejection of claims 1-5, 7, 8 and 12-14 has been overcome.

35 USC §103(a) REJECTION

Claims 9-11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,960,147 to Murray and U.S. Patent No. 1,268,922 to Bryan in view of U.S. Patent No. 6,960,211 to Pfefferle et.al..

The Applicants respectfully traverse the 35 U.S.C. §103(a) rejection of claims 9-11.

In the interests of expediting prosecution of the instant application, and without admission that any amendment is required, the Applicants have amended claim 9 to recite, among other things, a bending-pliers system comprising: bending pliers having two jaws movable relative to one another, including *a receiving jaw having two spaced-apart peg members* at a fixed distance to one another with an axial extent and *having a first circumference operable for insertion through holes of a substantially planar bone*

plate to be received, a pressure-exerting jaw comprising a pressure-exerting element which, when the bending pliers are actuated, cooperates with a received bone plate in a region between the two peg members, the peg members having an outside diameter which is variable along their axial extent in order to cooperate with different hole types, *wherein the pressure-exerting element* is of a substantially peg-shaped design and *has a second circumference inoperable to engage the holes of the bone plate*; and at least two types of substantially planar bone plates, each with a different hole type, or a substantially planar bone plate with holes of different types; wherein the two peg members of the receiving jaw are fixed along a single axis; wherein the pressure exerting jaw is selectively operable to move transverse to the single axis.

Neither Murray, Bryan and/or Pfefferle et al., either alone or in combination therewith, disclose or suggest the invention as claimed in independent claim 9, as amended, or the claims dependent therefrom.

As previously noted, neither Murray and/or Bryan, either alone or in combination therewith, disclose or suggest bending pliers comprising a first jaw having two spaced-apart peg members, the peg members of the first jaw having a first circumference operable for insertion through holes of a substantially planar bone plate to be received, and a second jaw supporting a counter-bearing element that cooperates upon actuation of the bending pliers with a received bone plate in a region between the two peg members of the first jaw, wherein the counter-bearing element is of a substantially peg-shaped design and has a second circumference inoperable to engage the holes of the bone plate.

The recitation of Pfefferle et al. does not cure the deficiencies in the teachings of Murray and/or Bryan, either alone or in combination therewith.

Specifically, while Pfefferle et al. may arguably disclose a bone plate with different sized or shaped holes, it does not disclose or suggest a bending-pliers system wherein the peg members of the respective jaw members are sized and shaped differently so as to ensure that the user can only engage the bone plate with the peg members of the receiving jaw, as opposed to the peg member of the pressure-exerting jaw. In this manner, the bone plate will be properly manipulated without causing damage thereto. Thus, one of ordinary skill in the art would not look to Murray, Bryan and/or Pfefferle et al., either alone or in combination therewith, for guidance on a bending pliers system, as presently claimed.

Because claim 9 is allowable over Murray, Bryan and/or Pfefferle et al. either alone or in combination therewith, for at least the reasons stated above, claims 10 and 11, which depend from and further define claim 9, are likewise allowable.

Accordingly, the Applicants contend that the 35 U.S.C. 103(a) rejection of claims 9-11 has been overcome.

CONCLUSION

In view of the foregoing, the Applicant respectfully requests reconsideration and reexamination of the Application. The Applicant respectfully submits that each item raised by Examiner in the Final Office Action of December 26, 2007 has been successfully traversed, overcome or rendered moot by this response. The Applicant respectfully submits that each of the claims in this Application is in condition for allowance and such allowance is earnestly solicited.

The Examiner is invited to telephone the Applicant's undersigned attorney at (248) 723-0487 if any unresolved matters remain.

Any needed extension of time is hereby requested with the filing of this document.

The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 08-2789.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

April 25, 2008

Date

A handwritten signature in dark ink, appearing to read "Preston H. Smirman", written over a horizontal line.

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